IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B. CIVIL WRIT PETITION No.1479/1999
SMT. RAMGIRI V/s BOARD OF REVENUE & OTHERS

DATE OF ORDER ::: 15th MARCH 2007

PRESENT

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri R.K. Goyal for the petitioner.
Shri R.K. Mathur for the respondents.

Under challenge in this writ petition is the judgment dated 27.4.1998 whereby second appeal filed by respondent No.4, Shala Vikas Samiti, Government Higher Primary School, Lalpur, Tehsil Kishangarhwas, District Alwar, was allowed reversing thereby the order dated 30.4.1994 passed by the Revenue Appellate Authority, Behrod-Kishangarh and the subsequent order dated 23.2.99 whereby

review petition filed by the petitioner was dismissed.

Factual matrix of the case is that the petitioner who is domicile resident of village Lalpur, Tehsil Kishangarhwas, District Alwar on recommendation of the Secretary, District Soldier Board, Alwar was allotted 15 bighas of land out of Khasra No.161 by the Collector, Alwar some time in 1965. This allotment was made to the petitioner on recommendation of the District Soldier Board, Alwar in recognition of the services rendered by by her late husband Shri Jagmal Singh who while serving in Indian Armed Forces, died in action during Indo-China war of 1962. When it was discovered that the said land was in occupation of the trespasser, the Collector, Alwar by order dated 2.8.1972 made allotment of another land measuring 15 bighas to the

petitioner out of Khasra No.79/1 which was situated in revenue village Lalpur of Tehsil Kishangarhwas in District Alwar. This allotment was made under rule 11(3)(A) of the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1970. The petitioner claims to be in physical and cultivatory possession of the land in dispute ever since its allotment.

During settlement in the year 1987, the part of the land of the petitioner measuring 10 bighas and 10 bishwas was shown in Khasra No.430/2 whereas remaining 4 bighas and 5 bishwas was shown in Khasra No.519. The land of Khasra No.519 was shown as Gair Mumkin Abadi. It is so happened that Gram Panchayat of village Lalpur requested for allotment of land for purpose of play ground of a school. When initially proposal was made for land of Khasra No. 591, the Gram

Panchayat in its report dated 13.12.1987 conveyed to the District administration that no such land was available in that Khasra. It was thereafter that the land measuring 3 bighas and 10 bishwas was allotted to the respondent NO.4 namely Shala Vikas Samiti,Lalpur out of land Khasra NO.519 vide order of the Collector dated 19.12.1987. When the the petitioner came to know about this, she filed review petition u/s 86 of the Rajasthan Land Revenue Act, 1956, on 30.12.1987. The Collector, Alwar vide order dated 7.1.1988 stayed operation of the allotment order dated 19.12.87 and called for the report from Tehsildar. The Naib Tehsildar submitted a detailed report to the District Collector stating therein that the land in dispute was in possession of the petitioner ever since its allotment to her in the year 1972 including the

disputed 3 bighas and 10 bishwas land of Khasra No.519. It was reported that against the allotted 15 bighas of land, the petitioner was put in possession of only 14 bighas at the time of settlement. While 10 bighas and 10 bishwas of land fall in Khasra NO.430/2 and remaining 3 bighas and 10 bishwas came in Khasra NO.519. But in the recent settlement the land of Khasra No.519 was shown as Siwai Chak and therefore the petitioner was recorded as trespasser therein. If the petitioner is evicted from this land, she would be left with only 10 bighas and 10 bishwas as against the originally allotted 15 bighas of land.

Around this time, when the review petition was pending before the Collector, the petitioner had also filed revenue suit seeking correction of the entries in the revenue records showing the land of Khasra

No.519 as Siwai Chak and recording her as trespasser. The Collector on consideration of the entire facts situation and the report of the Naib Tehsildar, allowed the review petition vide order dated 25.2.1992 and directed that the fresh proposals be called from the SDO Kishangarhwas for allotment of another piece of land as play ground.

The respondent No.4 filed an appeal against the judgment of the Collector before the Revenue Appellate Authority who by its order dated 30.4.1994 rejected the same. Aggrieved by the judgment dated 25.2.1992 passed by the Collector and that of the Revenue Appellate Authority dated 30.4.1994 the respondent No.4 thereupon filed second appeal before the Board of Revenue for Rajasthan, Ajmer. It was allowed by the learned Board vide its judgment dated 27.4.1998. The review petition filed by the

petitioner thereagainst was also dismissed b y the Board vide order dated 23.2.1999 which judgments are now impugned in the present writ proceedings.

I have heard Shri R.K. Goyal, the learned counsel for the petitioner and Shri R.K. Mathur, the learned counsel for the respondents.

Shri R.K. Goyal the learned counsel for the petitioner argued that the learned Board of Revenue had wrongly assumed that the petitioner was a trespasser in the land of Khasra No.519 and was ejected from such land by recourse to section 91 of the Act. The Board failed to appreciate the order passed by the District Collector in its true perspective inasmuch as also ignored the report obtained by the Collector from Naib Tehsildar in which

it was clearly stated that out of total 15 bighas of land allotted to the petitioner, she was still possession in 14 bighas which was originally part of the land of Khasra No.79/1 and during settlement divided into two parts namely Khasra No.430/2 for 10 bighas and 10 bishwas and Khasra No.519 for 3 bighas and 10 bishwas. The Board has however misread the arguments and the record and proceeded to decide the matter on the unfounded assumption that the petitioner was already having entire land of 15 bighas in her possession out of Khasra No.430/2 and the land of Khasra NO.519 measuring 3 bighas and 10 bishwas would be in addition to the aforesaid 15 bighas of land. Shri Goyal, therefore, argued that misreading of the relevant records constituted an error

apparent of the face of record resulting into wrong judgment. He further argued that the Board has also held that there was no record on the basis of which the petitioner could be shown to be in possesson of the land of Khasra NO.430/2 and Khasra No.519, The Board has proceeded to decide the entire matter on the basis of entries of Jamabandi for Samwat 2038 to 2043 for which already the suit for correction of entries was pending. Shri R.K.Goyal has invited my attention to the judgment passed b y the Revenue Appellate Authority, Alwar dated 24.1.2004 whereby the suit field by the petitioner for correction of entries was allowed reversing thereby in the judgment dated 10.12.2002 passed by the SDO rejecting such suit. The Revenue Appellate

Authority has directed the correction of entries. He, therefore, prayed that the writ petition be allowed and the judgment passed by the Board of Revenue b e set aside.

On the other hand, Shri R.K. Mathur, the learned counsel for the respondent No.4 opposed the writ petition and argued that the land of Khasra No.519 measuring 3 bighas and 10 bishwas was allotted to the respondent NO.4 for play ground of the school, then because the land was recorded as Siwai Chak. The petitioner was merely a trespasser on such land. The District Collector made allotment upon verifying these facts and obtaining report from the authorities below. He thereafter committed a legal error in allowing the review petition thereby cancelling the allotment made in

favour of the respondent No.4. The Revenue Appellate Authority has also failed into the same trap. The Board of Revenue has rightly allowed the second appeal field by the respondent No.4. He further submitted that the judgment passed by the Revenue Appellate Authority, Alwar dated 24.1.2004 whereby the correction of the entries in regard to the disputed land in Khasra No.519 has been made, has also been challenged in an appeal filed before the Board of Revenue. He argued that the judgment passed by the Revenue Appellate Authority on 24.1.2004 is also liable to be ignored because it could not be passed in the face of earlier judgment of the Board of Revenue dated 27.4.98. He submitted that the judgment passed by the Board of Revenue does not suffer

any error as may warrant interference by this court in its writ jurisdiction. He prayed that the writ petition be dismissed.

I have given my thoughtful consideration to the rival arguments advanced by learned counsel for the parties and perused the material on record.

A critical examination of the impugned judgment dated 27.4.98 passed by the Board of Revenue reveals that in para No.7 of the judgment, the Board has recorded a finding that 15 bighas of land which was allotted to the petitioner was later covered in Khasra Nbo.430/2, and therefore, the argument of the petitioner that 10 bighas and 10 bishwas land from Khasra No 430/2 and 3 bighas and 10 bishwas was of Khasra

No.519 had no basis whatsoever. In para No.8 of the judgment, the Board of Revenue has further recorded that when the Collector made the allotment of 3 bighas and 10 bishwas of land in Khasra No.519, the petitioner could have no title over such land particularly when she was recorded as trespasser there about. The findings recorded by the Revenue Appellate Authority that the petitioner was in possession of the same land which was allotted to her had therefore no basis and has been so recorded without there being any authentic proof. Examination of the finding recorded in these two paras shows that the such conclusions have been arrived at by the Board singularly on the basis of factum of petitioner having been recorded as trespasser in

Jamabandi of Samvat 2038 and 2043 and further fact that the entire 15 bighas land allotted to the petitioner was covered by the new Khasra No.430/2 which has replaced an old Khasra No.79 as recorded in the column No.5 of the Jamabandi of the Samvat 2038 and 2043. The Board therefore proceeded on the assumption that already 15 bighas of land of Khasra No.430/2 was allotted to the petitioner wherein as per the Jamabandi she has been recorded as Gair Khatedar. Argument of the petitioner that she had only 10 bighas and 10 bishwas in Khasra NO.430/2, 3 bighas and 10 bishwas for Khasra No.519 had no basis whatsoever. The Board appears to a picked up only one part from the report of Naib Tehsildar where on the basis of report of the Officer-in-Charge

of the Revenue Cell, Alwar in which it was mentioned that the petitioner was recorded as trespasser in Khasra No.519 but he has not given any respect to the finding recorded by the District Collector and upheld by the Revenue Appellate Authority. The District Collector has taken note of the fact that the petitioner was in possession of the land in dispute much before its allotment to the respondent No.4 by order dated 19.12.1987. The District Collector also noticed the fact that though the allotment of 15 bighas of land was made out of erstwhile Khasra No.79 was made to the petitioner, she was put in possession of only 14 bighas. In settlement, Khasra No.79 was renumbered as Khasras No.430 and 519. The petitioner was in possession of 10

bighas and 10 bishwas of land from Khasra No.430 and 3 bighas and 10 bishwas of land in Khasra No.519. There was therefore no land available for being allotted to the petitioner in Khasra No.519 because such land was already in possession of the petitioner. The Collector also had the advantage of considering report of Naib Tehsildar and the map prepared by him corresponding to the map prepared at the time of earlier settlement and the Milan Kshetraphal. Convinced with his the arguments he allowed the review petition of the petitioner. The Revenue Appellate Authority also upheld such finding and further recorded that the petitioner was described as trespasser in the land measuring 3 bighas and 10 bishwas of Khasra NO.519 because of the

allotment made by the Collector in favour of the respondent No.4. The Board of Revenue has therefore failed to correctly appreciate the relevant record and thus committed an error apparent on the face of record so as to justify interference by this court in its supervising jurisdiction under Article 227 of the Constitution of India. In fact, the Revenue Appellate in subsequent judgment dated 24.1.2004 whereby it has allowed the revenue suit of the petitioner for correction of the entries in the revenue records has also reiterating the same reasoning which has been given by the District Collector and the Revenue Appellate Authority.

In view of what has been discussed above, the writ petition is allowed and the judgments dated 27.4.98 and 23.2.99 passed by the Board are set aside. There shall be no order as to costs.

(Mohammad Rafiq),J.

Chauhan/